

HIGH COURT. Apia. 1950. 6, 12, October. MARSACK C.J.

Arrest - right of arrest by private citizen - no statutory right - common law applies - damages for wrongful arrest.

This was an action for damages for assault and wrongful arrest reported on that point only. The defendant who was the manager of the N.Z.R.E. plantation suspected the plaintiff of theft of cattle from the plantation. He took the plaintiff into custody and handed him over to the Police at Apia. The plaintiff claimed damages.

- Held:
- (1) There is no statutory provision in Western Samoa conferring the right of arrest on private persons.
  - (2) The common law right of arrest applies only in cases of felonies.
  - (3) Felonies in this context have been abolished in Western Samoa.

Walters v. W.H. Smith and Son (1914) 83 L.J.K.B. 335 referred to.

Judgment for plaintiff.

Plaintiff, in person.  
Jackson, for defendant.

Cur. adv. vult.

MARSACK C.J.: This is an action for damages for, inter alia, assault, wrongful arrest and false imprisonment.

The facts upon which the claim is based have been the subject of much previous litigation, and by consent of the parties the evidence given in the trials of the plaintiff in July 1947 and of the defendant and others in October 1947, as recorded in the Judge's notes, are to form part of the evidence in the present proceedings.

The facts can be shortly stated. On 29th May 1947 the defendant, who suspected the plaintiff of stealing cattle from the New Zealand Reparation Estates' plantation at Mulifanua, went with some other employees of the N.Z.R.E. to Tafua and there arrested the plaintiff, taking him first to Mulifanua and then to the Police station at Apia. During the arrest an altercation arose between the parties, in the course of which the defendant struck the plaintiff a blow on the jaw and shot the defendant's horse. After arrival of the party at Apia the Police took charge of the matter. The plaintiff was prosecuted for trespass and theft, and acquitted. The defendant was later charged with assault on the plaintiff, and with unlawfully killing the plaintiff's horse; on each count he was convicted and discharged.

No legal argument was addressed to me at the hearing on the claim for assault and wrongful arrest, but I have consulted all the authorities noted by Herd C.J. on the argument before him, together with such others as are available in the extremely limited High Court library.

The first question to be decided is as to what powers of arrest, if any, are held by a private citizen in Western Samoa. There appears to be no statutory power, as there is under the Crimes Act in New Zealand, and therefore the only right to arrest possessed by a private citizen in this Territory must be based on the English common law. In Salmond on Torts (4th Edition) at page 391 the common law rule is stated as follows:-

"A private person justifying an arrest for a suspected felony must prove that a felony has actually been committed, whether by the person arrested or by

someone else, and if in fact there has been no felony committed it is no defence that there was reasonable and probable cause for believing the person so arrested to be guilty."

This is consistent with the statement in Bullon and Leake's Precedents of Pleading, cited with approval by Sir Rufus Isaacs C.J. in Walters v. W.H. Smith and Son (1914) 83 L.J.K.B. 335 at page 341:

"A private individual is justified in himself arresting a person, or ordering him to be arrested where a felony has been committed, and he has reasonable ground of suspicion that the person arrested is guilty of it."

In the same case, at page 339, Sir Rufus Isaacs says:-

"Interference with the liberty of the subject, and especially by a private person, has even been most jealously guarded by the common law of the land....When a private person makes or causes the arrest....in order to justify his action he must prove, amongst other things, that a felony has actually been committed."

It is clear from these authorities that there is no right of arrest by a private citizen, under the common law, unless the commission of a felony is proved. This rule is subject only to an exception noted in Halsbury 2nd Edition Vol. IX page 85 paragraph 113, giving a private person the right of arrest where a breach of the peace has been actually committed or is reasonably apprehended.

Section 214 of the Samoa Act 1921 provides that, so far as may be necessary for the purpose of any rule of the common law, all offences shall be deemed to be misdemeanours. As the common law gives (except in the case of breaches of the peace) no right of arrest to private citizens in cases of misdemeanour it follows that no private person in Western Samoa may without warrant arrest another person for the suspected offence of theft.

Even if such a right did exist, it would not protect the defendant in these proceedings. I find that the defendant had reasonable grounds for suspecting that the plaintiff had been guilty of theft; but as the commission of the offence was not proved, on the authority of Walters' case he was not justified in making the arrest.

There remains for consideration the submission of Mr Jackson that the defendant was entitled to take the plaintiff into custody for a breach of the peace. In my view, this contention cannot be sustained. It is an essential condition of the right of arrest that the person arrested should be informed of the reason for his being taken into custody.

"It is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested:" per Lord Simonds in Christie v. Leachinsky /1947/ 1 All E.R. 567 at page 575.

It is not necessary that the charge should be formulated in legal language, as long as the reason for the arrest is made clear: R. v. Ford (1819) Russ and Ry. 329. Certainly circumstances might arise in cases of breach of the peace when it is impracticable at once to inform the person arrested of the reason for the arrest, but they are not present here.

The evidence of the defendant makes it clear that he was accusing the plaintiff of theft. His first remark, on confronting the plaintiff, was "where is that cow you killed?" He went on to explain his reasons for suspecting the plaintiff. In the July hearing he said in reply to a question by the plaintiff in cross-examination - "I detained you for theft of a beast". I find on the evidence that the defendant attempted to arrest the plaintiff on a charge of theft, and that such breach of the peace as did occur arose as a result of the attempted arrest; and, further, that the plaintiff was

taken into custody on a charge of theft and not for a breach of the peace. It is worthy of note that the plaintiff was never charged with a breach of the peace, though seven charges in all were brought against him. On these findings the plaintiff is entitled to recover damages for wrongful arrest.

There remains the claim in respect of the assault. The defendant admittedly struck the plaintiff a blow on the jaw. He claims that he did this because of his fear that the plaintiff would use a knife, and to protect the other members of the party. I do not think this explanation justifies the blow, and other means to restrain the plaintiff from any threatened violence could have been tried. That appears to have been the view of Herd C.J. in convicting the defendant of the assault. At the same time the learned Judge obviously regarded the offence as little more than technical as he inflicted no penalty. With that opinion I concur. The plaintiff is entitled to nominal damages.